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10/657,997	09/09/2003	Charles Ray Jones		2283

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Germantown, MD 20874-2828

EXAMINER

MCCORMICK, GABRIELLE A

ART UNIT	PAPER NUMBER
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3629

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/657,997	Applicant(s) JONES, CHARLES RAY	
	Examiner Gabrielle McCormick	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the amendment filed on September 13, 2008.
2. Claims 1-3 have been amended.
3. Claims 1-13 are currently pending and have been examined.

Specification

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. On page 5 of Applicant's remarks, filed March 13, 2008, Applicant suggests that an alternative title of the invention may be used, however, the specification has not been properly amended (i.e., using strike-outs and underlining) to reflect the change. The Examiner requests that if the Applicant intends to amend the title of the invention that it is filed in accordance with 37 CFR 1.121.
5. The Examiner thanks the Applicant for the amendment to the Abstract.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title".
7. **Claims 1-3** are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.
8. 35 USC 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, **or** composition of matter, **or** any new and useful improvement thereof" (emphasis added). Applicant's claim mentioned above is intended to embrace or overlap **two** different statutory classes of invention as set forth in 35 USC 101. The claims begin by discussing a method (ex. preamble) for improving safety culture, but proceeds to consist of "a means of collecting and communicating". This terminology points to a system, therefore the claim

is directed to both a method and a system. Dependent claims 2 and 3 are also directed towards "computer software programs". Claim 2 recites elements of computer software programs, including a means of peer-review and concurrence; claim 3, recites computer software programs and a means to present a summary. "A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", Ex parte Lyell (17 USPQ2d 1548). A suggestion to overcome this rejection would be to claim solely a system and the various system components (such as the computer programs and various means).

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. **Claim 3** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
11. Applicant has amended the claim to incorporate the following limitation: *said summary is examined and safety culture related conclusions reached by regulators and those persons having an economic interest in the organization, thus enabling an additional means external to the organization for enhancing the safety culture within the organization based on or resulting from the methods of the current invention.*
12. The specification discloses the following:
13. [0026] Special reports are provided to regulatory entities.
14. [0041] Submittals are distributed to regulators.

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15. [0046] All system users, stakeholders, etc. may provide comments on issues and concerns raised by other members.
16. The Examiner asserts that there is no disclosure for a summary being examined and safety culture conclusions being reached by regulators and those persons having an economic interest in the organization, thus enabling an additional means external to the organization for enhancing the safety culture.
17. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
18. **Claims 1-3** are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph. The Examiner finds that because claims 1-3 are replete with 35 U.S.C. 112 2nd paragraph indefiniteness rejections, it is difficult if not impossible to completely construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of providing art rejections even though the claim contains 35 U.S.C. 112 2nd paragraph rejections, the claims are construed and the art is applied *as much as practically possible*.
19. The claims refer to the invention as a method, however, provide the limitations associated with a system type claim. This renders the claims indefinite because a method claim must provide for the steps involved with the method/process. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.
20. **Claim 1** contains the following phrases that render the claim vague and indefinite: "with or without originator anonymity" and "with or without the approval". The limitations associated with each phrase are nullified. It is unclear whether any limitations are recited.
21. **Claim 2** contains the following phrases that render the claim vague and indefinite: "the computer software programs": Claim 2 depends from claim 1 which recites "one or more computer programs" therefore it is unclear how claim 2 is operable under the circumstance of a single computer program. Claim 2 may be amended to state "one or more computer programs", as in claim 1. Next, the "programs" include "a means". Is one "means" shared by the plurality of

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programs? Additionally, it is unclear how the parenthetical information is intended to limit the claim. Lastly, "such as": this phrase makes it unclear whether the elements following the phrase are intended to limit the claim.

22. **Claim 3** contains the following phrases that render the claim vague and indefinite: "the mentioned computer software programs": Claim 3 depends from claim 1 which recites "one or more computer programs" therefore it is unclear how claim 3 is operable under the circumstance of a single computer program. Claim 3 may be amended to state "one or more computer programs", as in claim 1. Next, the "programs" include "a means". Is one "means" shared by the plurality of programs? Further, the intent of "said summary is examined and safety culture related conclusions reached by regulators and those persons having an economic interest in the organization..." is unclear. Is the verb "are" omitted before "reached"? Or are the summary and conclusions examined?

Claim Rejections - 35 USC § 102

23. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

24. **Claims 1-2** are rejected under 35 U.S.C. 102(e) as being anticipated by Carlson et al. (US Pub. No. 2003/0135378 hereinafter referred to as "Carlson").
25. **Claim 1:** Carlson discloses a method and system for reporting and tracking incident reports that affect personnel, production, equipment and the environment. (Abstract). Figure 2 and para. [0040] disclose the computer network, database and user interfaces for operating the method.

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Referring to para. [0035], Carlson discloses that an incident is reported by a person with knowledge of the incident and is recorded in a database. Carlson defines an incident to be the result of “problems and hazards causing an unexpected or undesirable result relating to production, personnel, equipment, or the environment” and that the incident report includes an “identification of harm or possible harm to personnel...or environment.” It is understood that hazards to personnel and the environment constitute safety concerns, therefore, a system addressed to automated reporting, tracking and corrective actions inherently improves an organization's safety culture. The combination of an accessible user interface for reporting incidents provides the means for submittals at any time on a case-basis and without requiring any approvals for submission. The incident report includes the originators' names (para. [0051]), therefore reports are submitted without anonymity. The database permits users to perform keyword searches for incident reports as well as determine commonalties among the report for cross-referencing, etc. (para. [0054]), thus performing processing that improves the safety culture, allows for evaluations and is capable of being mined for trends. The system also provides automatic notification (i.e., transmits the incident) that results in alerting supervisory personnel to a new incident and allows the supervisor to review the report, make conclusions and assign corrective action. (para. [0036])

26. **Claim 2:** Carlson provides *peer-review and concurrence* in para. [0035] in which “production personnel involved in the incident...” are part of the reporting process. Through the inclusion of personnel within the incident report (i.e., peer identification data fields), a means for peer-review and concurrence is provided. Further, the corrective action process where the corrective actions are assigned to designated personnel (P[0036]) further discloses a means of peer-review and concurrence, as it is inherent in the process of corrective action that the incident is both reviewed and concurrence is reached as to the corrective action to be taken. The incident report includes “the personnel”, therefore all involved are named and no one “whistleblower” is identified that may result in individual reprisals.

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27. Note: the recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The phrase, "thus increasing issue and concern validity and providing a means of reducing or avoiding reprisals against individual whistleblowers" is construed to provide the intended use of the means of peer-review and concurrence. Carlson provides both designation of involved personnel (and therefore the means for peer-review), as well as a corrective action system which designates personnel assigned to review the incident report (i.e., provide peer-review and concurrence) as part of completing the corrective action (P[0013]). This results in a peer-review means that is therefore capable of increasing issue and concern validity and providing a means of reducing or avoiding reprisals against individual whistleblowers.

Claim Rejections - 35 USC § 103

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson et al. (US Pub. No. 2003/0135378 hereinafter referred to as "Carlson").
30. **Claim 3:** Carlton discloses a search capability to "list resolved incidents with certain commonalities that may be further used to assess training programs, assess prevention programs, identify recurrent problems..." (P[0054]). Thus, a summary of issues and concerns is presented, examined and conclusions are reached by persons with an economic interest in the organization (the employees have an economic interest in the organization).

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31. Carlton does not explicitly disclose that regulators reach safety culture conclusions, however, Carlton discloses that “governmental regulation and oversight often requires the reporting of environmental incidents to governmental authorities and particular corrective action which may be designated by statute, regulation, or government agency directive.” (P[0008]). Therefore, it is obvious that regulators reach conclusions about an organization’s safety culture as evidenced by Carlton’s disclosure of agency directives.
32. Further, the Examiner takes **Official Notice** that it is old and well known for government agencies to audit organizations for compliance to safety (personnel and environmental) regulations. As a necessary part of such an audit, incident reports are evaluated and conclusions are made with respect to compliance of the organization. One such example is the auditing of a facility for compliance with the OSHA STAR program.
33. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included safety culture conclusions made by regulators, in the system disclosed by Carlson, for the motivation of providing a method of providing feedback to an organization with respect to compliance with government regulations. This feedback enables an organization to focus its efforts to improve to attain such designations as the OSHA STAR.

Response to Arguments

34. Applicant should submit an argument under the heading “Remarks” pointing out disagreements with the examiner’s contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.
35. In response to applicant's arguments, the recitation “improve an organization’s safety culture by enhancing organizational communication” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process

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steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

36. Carlson, however, in disclosing a method and system of reporting incidents related to personnel and environmental hazards (i.e., safety incidents) and tracking their closure through a corrective action system, does disclose a method of improving an organization's safety culture.
37. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a private and anonymous database) are not recited in the rejected claim(s). Claim 1 recites that concerns are "submitted **with or without** originator anonymity. Carlson provides incident submissions without anonymity, therefore disclosing this claim limitation.
38. Claim 2 recites the limitation of a peer-review means. As Carlson provides both the identification of involved personnel and a corrective action system in which incidents are reviewed by fellow employees (i.e., peers), a peer-review means is disclosed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabrielle McCormick whose telephone number is (571)270-1828. The examiner can normally be reached on Monday - Thursday (5:30 - 4:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. M./
Examiner, Art Unit 3629

/John G. Weiss/
Supervisory Patent Examiner, Art Unit 3629